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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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| MICHAEL A. BOWIE,<br>Plaintiff and Appellant,<br>v.<br>OLADAPO AGORO,<br>Defendant and Respondent. | A143157<br><br>(Alameda County<br>Super. Ct. No. RG14733136) |

## INTRODUCTION

Michael A. Bowie appeals from the denial of a civil harassment restraining order against Oladapo Agoro. Bowie contends he presented sufficient evidence of harassment entitling him to a restraining order. He also contends the trial court denied him due process when it did not inform him, a self-represented litigant, of his right to cross-examine Agoro.[1] We affirm.

## BACKGROUND

Bowie and Agoro are members of the same religious organization. In a petition for a civil harassment restraining order, Bowie alleged that on July 12, 2014, a dispute between the two men escalated to a physical altercation. Agoro allegedly threatened to "take this to the streets" and punched Bowie in the side, inflicting lacerations to his right hand and bruises to his right side. Pending a hearing on the petition, the trial court issued a temporary restraining order prohibiting Agoro from harassing Bowie.

[1] There is a suggestion in the record, however, that Bowie attended law school.

At the hearing on the petition, the trial court first noted it had a copy of Bowie's and Agoro's written statements, and each party told the court his statement was true and accurate. Bowie, in his statement, asserted that as he was deflecting Agoro's "advancements," Agoro grabbed Bowie's right hand and punched Bowie in the left side. Bowie claimed to have sustained lacerations as he pulled his right hand free from Agoro. Agoro claimed to have acted in self-defense, striking Bowie in the shoulder only after Bowie pushed him.

Bowie testified to what he had alleged in his petition, namely that Agoro threatened him and struck him. He presented photographs showing injuries to his hand and torso. He also offered an unsworn written statement by a witness, Wendell Fudgen, who said he heard Agoro threaten to punch Bowie, then heard Bowie tell Agoro to "bring it," next saw Agoro come toward Bowie, and finally saw Agoro punch Bowie.[2] In response to a question from the court, Bowie conceded that apart from this incident, there was no ongoing pattern of harassing conduct by Agoro.

Following Bowie's direct testimony, counsel for Agoro proceeded with cross-examination. During questioning, Bowie first stated the incident occurred on Thursday, July 10 and he had been struck on his left side, but then conceded he had alleged in his petition the incident occurred on Saturday, July 12 and he had been struck on his right side. He also conceded pushing Agoro, in response to what he perceived as Agoro's aggression in advancing toward him. Bowie admitted he sent a text message to Agoro an hour after the incident in which he apologized for the situation escalating and said both men needed to be peaceful. He also acknowledged he waited five days before filing a police report, and only did so at the suggestion of his physician. Bowie also conceded he and Agoro have twice been in the same locale attending prayer services without further

[2] Bowie filed a motion to augment the record with the photographs, Fudgen's statement, and also a police report that Agoro's counsel referenced during cross-examination of Bowie. We grant augmentation with respect to the photographs and witness declaration, which were submitted to the court at the hearing. We deny the motion as to the police report, which neither party submitted to the court or used as an exhibit. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

incident. He further testified Agoro had not responded to his text message urging peace, although expressed frustration with Agoro's silence.

Agoro then asked for an opportunity to make a statement. He claimed the source of the problem that had given rise to the meeting where tempers had flared was Bowie's dismissal three years earlier from a leadership position with the Buddhist organization and Bowie's subsequent negative comments about the organization, including in Internet postings. He felt bullied by Bowie and reacted in self-defense.

At the conclusion of the hearing, the trial court denied Bowie's request for an injunction prohibiting harassment, finding Bowie failed to establish harassment by clear and convincing evidence. The court cited the discrepancies in Bowie's story regarding the date of the confrontation and the location of his injuries, and the evidence Agoro acted in self-defense. While the court stated Bowie might have proved his case by the lower preponderance of the evidence standard, he did not prove it by the more rigorous clear and convincing standard required for a restraining order.

## DISCUSSION

### *Harassment Law and Standard of Review*

"A person who has suffered harassment . . . may seek a temporary restraining order and an order . . . prohibiting harassment." (Code Civ. Proc., § 527.6, subd. (a)(1).) Actionable harassment includes "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." (*Id.*, § 527.6, subd. (b)(3).) Unlawful violence is further defined to include "any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others." (*Id.*, § 527.6, subd. (b)(7); *Russell v. Douvan* (2003) 112 Cal.App.4th 399, 401.) If the trial court "finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment." (Code Civ. Proc., § 527.6, subd. (i).)

Petitions for civil harassment restraining orders seek injunctive relief. It is well established " ' "that granting, denial, dissolving or refusing to dissolve a permanent or

preliminary injunction rests in the sound discretion of the trial court upon a consideration of all the particular circumstances of each individual case" ' and 'will not be modified or dissolved on appeal except for an abuse of discretion.' " (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 850; see also *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1495; *Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) Under this standard, " '[t]he trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.' " (*Packer v. Superior* Court (2014) 60 Cal.4th 695, 710; see *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1505 [applying substantial evidence review in restraining order context when facts disputed]; *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188 [same]; *Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137 [same].)

***Substantial Evidence***

Bowie contends the trial court erred because not only substantial, but clear and convincing, evidence supported issuance of a restraining order in his favor.

Bowie misunderstands the scope of substantial evidence review. The issue on appeal is not whether the evidence might have supported issuance of a civil harassment restraining order. Rather, the issue is whether substantial evidence supports the trial court's determination. (*Natalie D. v. State Dept. of Health Care Services* (2013) 217 Cal.App.4th 1449, 1455.) If it does, we may not substitute our judgment and second-guess the trial court, even if substantial evidence exists to support a contrary conclusion. (*Ibid.*) In this regard, "[w]e resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial . . . ." (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) While a trial court must find harassment by clear and convincing evidence (see Code Civ. Proc., § 527.6, subd. (i)), that heightened trial court standard does not apply on appeal. (*In re J.S.* (2014) 228 Cal.App.4th 1483, 1493.)

Here, the trial court conducted a hearing and received conflicting testimony from the parties. On the one hand, Bowie offered evidence that Agoro bore responsibility for

the physical confrontation. However, Agoro's testimony regarding self-defense, taken with Bowie's admission of pushing, his conciliatory text message, and his other inconsistencies, made Agoro's theory of events at least equally plausible. Thus, the trial court could reasonably conclude from the evidence that Agoro acted in self-defense and Bowie had not suffered harassment in the first place. (See *Russell v. Douvan, supra,* 112 Cal.App.4th at p. 401.)

Moreover, a single act of harassment is not sufficient for issuance of a restraining order without a finding of a threat of future harm. (*Russell v. Douvan*, *supra*, 112 Cal.App.4th at p. 401.) " 'The purpose of a prohibitory injunction is to prevent future harm to the applicant by ordering the defendant to refrain from doing a particular act. [Citations.] Consequently, injunctive relief lies only to prevent threatened injury and has no application to wrongs that have been completed. [Citation.] It should neither serve as punishment for past acts, nor be exercised in the absence of any evidence establishing the reasonable probability the acts will be repeated in the future.' " (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1266, italics omitted; see also *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 332.)

There was ample evidence before the trial court suggesting the parties' confrontation was an isolated incident unlikely to reoccur. For instance, the parties had already been in the same room since the incident without any further confrontation. Additionally, Bowie conceded in his testimony that there was no pattern of harassing conduct by Agoro.

***No Invitation to Cross-Examine***

Bowie also seeks reversal on the ground he was denied due process because the trial court did not inform him of his right to cross-examine Agoro.

Parties in civil proceedings have a due process right to cross-examine and confront witnesses. (*Dole Bakersfield, Inc. v. Workers' Comp. Appeals Bd.* (1998) 64 Cal.App.4th 1273, 1276; see also *Goldberg v. Kelly* (1970) 397 U.S. 254, 269.) Yet a party that does not timely assert its rights, even constitutional ones, forfeits them. (*People v. $17,522.08*

*United States Currency* (2006) 142 Cal.App.4th 1076, 1084 [right to jury trial].) "As the United States Supreme Court recognized in *United States v. Olano* (1993) 507 U.S. 725, 731 . . . , ' "[n]o procedural principle is more familiar . . . than that a constitutional right," or a right of any other sort, "may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." ' " (*In re Curtis S.* (2013) 215 Cal.App.4th 758, 761.) Thus, "[a] party on appeal cannot successfully complain because the trial court failed to do something which it was not asked to do." (*Farmer Bros. Co. v. Franchise Tax Bd.* (2003) 108 Cal.App.4th 976, 993.)

This rule of forfeiture applies to the right of cross-examination. (*People v. Skiles* (2011) 51 Cal.4th 1178, 1189 [asserted deprivation of right to cross-examine must be raised in trial court]; *People v. Mills* (2010) 48 Cal.4th 158, 212 [same]; *Mendoza v. Ramos* (2010) 182 Cal.App.4th 680, 687 [failure to request cross-examination results in forfeiture].) Therefore, it was not the trial court's obligation to inform Bowie of his right to cross-examine witnesses. Rather, if Bowie believed he needed to cross-examine Agoro, he needed to inform the trial court of his desire.

This is so even in light of Bowie's self-represented status, as such litigants are not entitled to special treatment. (*People v. $17,522.08 United States Currency*, *supra*, 142 Cal.App.4th at p. 1084; *City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 819.) " 'A litigant has a right to act as his own attorney [citation] "but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts; otherwise, ignorance is unjustly rewarded." ' " (*Glair*, *supra*, at p. 819.)

Bowie relies on *Gamet v. Blanchard* to argue courts should treat self-represented litigants with special care to ensure they are not inadvertently misled by either the adverse party or the court. (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284.) However, *Gamet* is not on point. In that case, the self-represented litigant was not merely left to her own devices, she "received information that was plainly inaccurate" and was given information that would have confused even a licensed attorney. (*Id.* at pp. 1283–

1284.) In contrast, the record here shows Bowie was not misled in any way during the course of the hearing, and his failure to assert his demand for cross-examination is not excused.

## DISPOSITION

The order of the trial court denying appellant's request for an injunction prohibiting harassment is affirmed. Respondent to recover costs on appeal.

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Banke, J.

We concur:

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Humes, P. J.

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Dondero, J.

A143157, *Bowie v. Agoro*